

as of 2002, there were approximately 1.6 million small organizations.⁹⁹¹ The term "small governmental jurisdiction" is defined as "governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand."⁹⁹² The term "small governmental jurisdiction" is defined generally as "governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand."⁹⁹³ Census Bureau data for 2002 indicate that there were 87,525 local governmental jurisdictions in the United States.⁹⁹⁴ We estimate that, of this total, 84,377 entities were "small governmental jurisdictions."⁹⁹⁵ Thus, we estimate that most governmental jurisdictions are small. Below, we discuss the total estimated numbers of small businesses that might be affected by our actions.

Broadband Radio Service systems, previously referred to as Multipoint Distribution Service (MDS) and Multichannel Multipoint Distribution Service (MMDS) systems, and "wireless cable," transmit video programming to subscribers and provide two-way high speed data operations using the microwave frequencies of the Broadband Radio Service (BRS) and Educational Broadband Service (EBS) (previously referred to as the Instructional Television Fixed Service (ITFS)).⁹⁹⁶ In connection with the 1996 BRS auction, the Commission established a small business size standard as an entity that had annual average gross revenues of no more than \$40 million in the previous three calendar years.⁹⁹⁷ The BRS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (BTAs). Of the 67 auction winners, 61 met the definition of a small business. BRS also includes licensees of stations authorized prior to the auction. At this time, we estimate that of the 61 small business BRS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent BRS licensees that are considered small entities.⁹⁹⁸ After adding the number of small business auction licensees to the number of incumbent licensees not already counted, we find that there are currently approximately 440 BRS licensees that are defined as small businesses under either the SBA or the Commission's rules. Some of

⁹⁹¹ Independent Sector, *The New Nonprofit Almanac & Desk Reference* (2002).

⁹⁹² 5 U.S.C. § 601(5).

⁹⁹³ 5 U.S.C. § 601(5).

⁹⁹⁴ U.S. Census Bureau, *Statistical Abstract of the United States: 2006*, Section 8, page 272, Table 415.

⁹⁹⁵ We assume that the villages, school districts, and special districts are small, and total 48,558. See U.S. Census Bureau, *Statistical Abstract of the United States: 2006*, section 8, page 273, Table 417. For 2002, Census Bureau data indicate that the total number of county, municipal, and township governments nationwide was 38,967, of which 35,819 were small. *Id.*

⁹⁹⁶ Amendment of Parts 21 and 74 of the Commission's Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act – Competitive Bidding, MM Docket No. 94-131 and PP Docket No. 93-253, *Report and Order*, 10 FCC Rcd 9589, 9593 ¶ 7 (1995) (*MDS Auction R&O*).

⁹⁹⁷ 47 C.F.R. § 21.961(b)(1).

⁹⁹⁸ 47 U.S.C. § 309(j). Hundreds of stations were licensed to incumbent MDS licensees prior to implementation of Section 309(j) of the Communications Act of 1934, 47 U.S.C. § 309(j). For these pre-auction licenses, the applicable standard is SBA's small business size standard.

those 440 small business licensees may be affected by the decisions in this 3rd MO&O and 2nd R&O.

In addition, the SBA has developed a small business size standard for Cable and Other Program Distribution, which includes all such companies generating \$13.5 million or less in annual receipts.⁹⁹⁹ According to Census Bureau data for 2002, there were a total of 1,191 firms in this category that operated for the entire year.¹⁰⁰⁰ Of this total, 1,087 firms had annual receipts of under \$10 million, and 43 firms had receipts of \$10 million or more but less than \$25 million.¹⁰⁰¹ Consequently, we estimate that the majority of providers in this service category are small businesses that may be affected by the rules and policies adopted herein. This SBA small business size standard is applicable to EBS. There are presently 2,032 EBS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions are included in this analysis as small entities.¹⁰⁰² Thus, we estimate that at least 1,932 licensees are small businesses.

There are presently 2032 EBS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions may be included in the definition of a small entity.¹⁰⁰³ EBS is a non-profit non-broadcast service. We do not collect, nor are we aware of other collections of, annual revenue data for EBS licensees. We find that up to 1932 of these educational institutions are small entities that may take advantage of our amended rules to provide additional flexibility to EBS.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements:

While these requirements are new with respect to potential licensees in the EBS and BRS bands, the Commission has applied these requirements to licensees in other bands. Moreover, the Commission is also eliminating many burdensome filing requirements that have previously been applied to BRS and EBS.¹⁰⁰⁴

To enable transition, proponents to arrange for the installation of required equipment, BRS and EBS licensees will be required to provide the following information to potential proponents: the transitioning licensee's full name, postal mailing address, contact person, e-mail address, and phone and fax number.¹⁰⁰⁵ Licensees will also be required to provide the location (street address and geographic coordinates) of the main station or booster serving each EBS receive site entitled to protection and other pertinent technical information on the antenna for that main station or booster. These requirements are

⁹⁹⁹ 13 C.F.R. § 121.201, NAICS code 517510.

¹⁰⁰⁰ U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, Table 4, Receipts Size of Firms for the United States: 2002, NAICS code 517510 (issued November 2005).

¹⁰⁰¹ *Id.* An additional 61 firms had annual receipts of \$25 million or more.

¹⁰⁰² The term "small entity" within SBREFA applies to small organizations (nonprofits) and to small governmental jurisdictions (cities, counties, towns, townships, villages, school districts, and special districts with populations of less than 50,000). 5 U.S.C. §§ 601(4)-(6). We do not collect annual revenue data on EBS licensees.

¹⁰⁰³ See 5 U.S.C. §§ 601 (3)-(5).

¹⁰⁰⁴ See Sections IV.B.1.d(ii) and IV.B.1.g(iii) *supra*.

¹⁰⁰⁵ See Section IV.B.1.d(i)(a) *supra*.

being adopted in response to a request from commenters that such information be provided. This information is critical to ensuring a smooth transition, because the Commission's ULS database does not contain information concerning the desired signal level at each EBS receive site entitled to protection during the transition. Furthermore, this information should be readily available to the licensee and is not particularly burdensome to collect and provide.

Licensees that self-transition must provide the following information to all BRS and EBS licensees in the BTA where the self-transitioning licensee is located: the self-transitioning licensee's full name, postal mailing address, contact person, e-mail address, and phone and fax number.¹⁰⁰⁶ Self-transitioning licensees will also be required to provide the location (street address and geographic coordinates) of the main station or booster serving each EBS receive site entitled to protection and other pertinent technical information on the antenna for that main station or booster.¹⁰⁰⁷

Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered:

The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): "(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for such small entities; (3) the use of performance, rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities."¹⁰⁰⁸

Regarding our decision to require licensees to transition by BTA instead of by MEA, we do not anticipate any significant economic impact on small entities. The overwhelming majority of petitioners preferred BTAs over the alternative of MEAs because they believe BTAs are both significantly easier to transition and less expensive to transition than MEAs. The record reflects that licensees almost unanimously agreed that the Commission should alter the transition area from MEAs to BTAs because these areas are more likely to conform to the size and location of geographic markets where systems have developed, and licensees, in many cases, have already developed interference and other interoperating relationships along BTA lines. Petitioners also requested that the transition area be changed to BTAs because transitioning such areas will be less expensive, making it easier for licensees to transition, especially small and rural operators. Thus, we believe this decision will actually result in cost-savings to entities that are responsible for transition costs.¹⁰⁰⁹

Regarding our decision to grant individual waivers of the rules rather than adopt a blanket "opt-out" for Multichannel Video Programming Distributors (MVPD), we believe that a large number of small entities will not be unduly burdened. While individual waivers require more work on the part of licensees, we anticipate that only a very few licensees, fewer than twenty, will be affected by the waiver process.

¹⁰⁰⁶ See Section IV.B.1.f(ii) *supra*.

¹⁰⁰⁷ See *id*.

¹⁰⁰⁸ See 5 U.S.C. § 603(c).

¹⁰⁰⁹ See Section IV.B.1.a *supra*.

Given that so few entities will be affected, we believe that an individual waiver is the more appropriate regulatory response than crafting a rule that covers so few entities.¹⁰¹⁰

Regarding our decision to allow licensees the option to self-transition in markets where a proponent does not come forward by a date certain or has withdrawn and no other proponent has come forward by a date certain, we do not believe this rule will impose any significant burdens on licensees because self-transitioning EBS licensees will be able to seek reimbursement for the costs of self-transitioning from commercial licensees and lessees in the BTA. BRS licensees that self-transition will be required to pay for their own costs. Licensees that do not transition will be faced with the prospect of losing their licenses. Thus, this rule provides an additional transition option for licensees who wish to comply with transition rules but cannot afford to be a proponent to retain their spectrum. Pursuant to this rule, EBS licensees can avoid losing their licenses for reasons that may be beyond their control (such as the financial inability to transition all licensees within its transition area, or the absence of a commercial proponent that can do so, or the failure of a commercial proponent to complete the process). We considered the alternative of requiring self-transitioning EBS licensees to pay their costs and rejected it as too costly for educational entities. There was overwhelming support in the record to permit licensees to self-transition and no opposition.¹⁰¹¹

Regarding our decision to require that all commercial licensees, in a proponent-driven transition, reimburse the proponent a pro rata share of the cost of transitioning a BTA to the new band plan, this decision is beneficial to licensees in that it avoids the “free rider” problem by requiring those who provide commercial service, whether through their own BRS or EBS channels or through leased EBS channels, to share the costs of transitioning the 2.5 GHz band. This relieves any particular commercial provider from having to pay for expenses of other commercial providers and institutes a cost-sharing regime that provides greater incentive for a proponent to come forward. We recognize that developing a list of reimbursable costs in the BRS/EBS context may be difficult given the varied types of operations in the band, but interested parties, such as Sprint, have already developed proposed lists. We also recognize that it may be difficult for the FCC to determine the population of a GSA, which is based on a 35-mile protected service area and not on a particular jurisdiction. Nonetheless, we believe that this scheme provides a fair and equitable solution, which outweighs the calculation difficulties that may arise.

Regarding our decision to adopt substantial service standards with safe harbors for BRS and EBS licensees, this decision does not impose any burdens on licensees above what is traditionally required for one to be a license holder. It is reasonable to expect that a licensee will deploy service on spectrum on which they have been licensed to operate, and the Commission routinely obligates licensees to do so lest the spectrum lie fallow and valuable spectrum resources go unutilized. Furthermore, substantial service standards are preferable to the alternative of construction benchmarks that focus solely on population served or geography covered and do not take into account qualitative factors important to end-users and the market, such as reliability of service, and the availability of technologically sophisticated premium services. Moreover, these standards reduce the likelihood of scenarios where licensees construct solely to meet regulatory requirements as opposed to satisfying market conditions.¹⁰¹² These standards are more lenient and flexible than the construction benchmarks that applied to these services prior to the rules

¹⁰¹⁰ See Section IV.B.1.b *supra*.

¹⁰¹¹ See Section IV.B.1.f *supra*.

¹⁰¹² See section IV.C.1 *supra*.

adopted in this proceeding. The safe harbors adopted today give licensees offering a variety of services ample opportunity to meet at least one safe harbor while ensuring that the 2.5 GHz band is used to provide an appropriate level of service.

Regarding our decision to establish a geographic service area for grandfathered E and F channel EBS licensees, allow such licensees to modify or assign their licenses, and employ a “splitting the football” mechanism where there is overlap, we do not believe this rule will impose any burdens upon licensees. To the contrary, this procedure will eliminate deadlocks in areas where licensees have overlapping service areas and have been unable to deploy service as a result thereof. Furthermore, this rule will permit grandfathered E and F EBS licenses, which have been providing service for 20 years, to modernize their systems to better serve the public. Granting this type of flexibility is consistent with the *BRS/EBS R&O*’s geographic area licensing and greater flexibility approaches. Moreover, there is substantial support from the commenters regarding this decision.¹⁰¹³

Regarding our decision to eliminate the rule that limits EBS licensees to four channels in a given geographic area, we do not believe that this action will impose additional obligations upon a licensee. To the contrary, given the wider range of services that EBS channels can now be used for and the changes to the Commission’s leasing rules, retention of the four-channel rule may actually unduly limit the ability of educational institutions and organizations to take full advantage of the potential of EBS. We recognize that this rule was designed to promote diversity of programming and ownership, and that, in many cases, four channels should provide sufficient capacity for EBS operations. However, this concern is mitigated by the fact that the four-channel rule could result in spectrum laying fallow when an educator wishes to use the spectrum. Furthermore, choosing the alternative option of retaining the restriction could undermine transition planning, which may in some instances require licensees to swap MBS for UBS/LBS channels or vice versa. Moreover, commenters overwhelmingly support elimination of the rule, which will obviate the need for the Commission to review numerous waiver requests by EBS licensees.¹⁰¹⁴

Regarding our decision to eliminate the wireless cable exception to the EBS eligibility rules, we recognize that BTA licensees who acquired their rights at auction may contend that they had an expectation that the exception would apply. However, this concern is mitigated by the fact that changes made by the *BRS/EBS R&O* to the 2.5 GHz band and the continued availability of EBS spectrum on a leased basis will provide commercial operators with sufficient access to spectrum even if the exception is eliminated. Furthermore, due to changes in technology and the video marketplace, there is unlikely to be a growing need for spectrum for wireless cable systems.¹⁰¹⁵

Regarding our decision to, where possible, change the regulatory fee structure for the BRS services to establish a tiered regulatory fee structure based on market size/MHz, we do not believe this new structure would be burdensome to licensees. On the contrary, the current methodology for assessing regulatory fees can be onerous for rural operators because, on a per population basis, the fees can amount to multiple times that of fees paid by urban licensees who serve more customers. In contrast, a sliding fee—based upon population density—would more equitably distribute fees. We recognize that assessing fees based on the benefits of spectrum requires quantification and measurement of those benefits to the

¹⁰¹³ See section IV.C.3 *supra*.

¹⁰¹⁴ See section IV.C.4 *supra*.

¹⁰¹⁵ See section IV.C.5 *supra*.

greatest extent possible, and that to the extent that variables used for fee calculation can change or become unknown, the fee could be difficult to ascertain. However, we believe that the public interest is better served by assessing BRS regulatory fees based on the scope of a licensee's authorized spectrum use and the benefits they receive under their spectrum authorization. Furthermore, this concern is mitigated by the fact that calculations will actually be simpler for licensees than employing a MHz/pops formula. Moreover, establishing a tiered formula by market size eliminates the difficulties involved in ascertaining population within a GSA.¹⁰¹⁶

The regulatory burdens contained in the 3rd MO&O and 2nd R&O are necessary in order to ensure that the public receives the benefits of innovative new services, or enhanced existing services, in a prompt and efficient manner. As described above, we have reduced burdens wherever possible by eliminating a number of unnecessary regulations.

Report to Congress:

The Commission will send a copy of this 3rd MO&O and 2nd R&O, including this FRFA, in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act.¹⁰¹⁷ In addition, the Commission will send a copy of this 3rd MO&O and 2nd R&O, including this FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of this 3rd MO&O and 2nd R&O and FRFA (or summaries thereof) will also be published in the *Federal Register*.¹⁰¹⁸

¹⁰¹⁶ See section IV.C.6 *supra*.

¹⁰¹⁷ See generally, 5 U.S.C. § 801 (a)(1)(A).

¹⁰¹⁸ See 5 U.S.C. § 604(b).

APPENDIX C**List of Filers to Big LEO Order On Reconsideration and AWS 5th MO&O****Petitions for Reconsideration**

Globalstar LLC (Globalstar)
Nextel
Society of Broadcast Engineers (SBE)
Sprint
Wireless Communications Association International (WCA)

Oppositions to Petitions for Reconsideration

BellSouth Corporation, BellSouth Wireless Cable, Inc. and South Florida Television, Inc. (joint)
BRS Rural Advocacy Group
Fusion UV Systems (Fusion)
Globalstar
International Microwave Power Institute
LG Electronics Inc.
Nextel
Sprint
WCA

Reply to Opposition to Petitions for Reconsideration

Association of Home Appliance Manufacturers (AHAM)
GE Company
Globalstar
Matsushita Electric Corporation of America (MECA)
SBE
WCA
WCA, Sprint, Nextel (joint)
Whirlpool

Surreply

WCA

Joint Motion to Dismiss

WCA, Sprint, and Nextel

Opposition to Joint Motion to Dismiss

AHAM

Motion for Leave to Accept Late-Filed Opposition

Fusion

Opposition to Motion for Leave to Accept Late-Filed Opposition or Motion for Leave to File Reply

Motion of WCA, Sprint and Nextel (joint)

Ex Partes

AHAM

Fusion

Globalstar

Motorola, Inc.

Sprint Nextel Corporation

WCA

APPENDIX D**List of Petitioners to *BRS/EBS R&O*****Petitions for Reconsideration**

Blooston, Mordkofsky, Dickens, Duffy & Prendergast
BRS Rural Advocacy Group
Catholic Television Network
Central Texas Communications, Inc.
Cheboygan-Ostego-Presque Isle Educational Service District/Pace Telecommunications Consortium
Choice Communications, LLC
Clearwire Corporation
Concord Community Schools
Creighton University
C&W Enterprises, Inc.
Digital Broadcast Corporation
Florida Atlantic University
The George Mason University Instructional Foundation, Inc.
Grand Wireless Company Michigan Operations
Hispanic Information and Telecommunications Network, Inc
Independent MMDS Licensee Coalition
The ITFS/2.5 GHz Mobile Wireless Engineering & Development Alliance, Inc.
Michigan Center School District
National ITFS Association
Nextel
North American Catholic Educational Programming Foundation, Inc.
Plateau Telecommunications, Inc.
Santa Rosa Junior College
School Board of Miami-Dade County, Florida
School Board of Palm Beach County, Florida
Shekinah Network
Southern Florida Instructional Television, Inc.
SpeedNet, L.L.C.
Sprint Corporation
WATCH TV Company
WBSWP Licensing Corporation (Sprint Corporation)
Wireless Communications Association International, Inc.
Wireless Direct Broadcast System

Opposition to Petitions for Reconsideration

BellSouth Corporation
BellSouth Wireless Cable, Inc.
Blooston, Mordkofsky, Dickens, Duffy & Prendergast
BRS Rural Advocacy Group
Choice Communications, LLC
Clearwire Corporation
C&W Enterprises, Inc.
Digital Broadcast Corporation
Hispanic Information and Telecommunications Network, Inc.

Illinois Institute of Technology
Independent MMDS Licensee Coalition
The ITFS/2.5 GHz Mobile Wireless Engineering & Development Alliance, Inc.
Luxon Wireless Inc.
National Telecommunications Cooperative Association
Nextel Communications
NY3G Partnership
SBC Communications Inc.
School Board of Broward County, Florida
School Board of Miami Dade County, Florida
School Board of Palm Beach County, Florida
Southern Florida Instructional TV, Inc.
South Florida Television, Inc.
SpeedNet, LLC
Sprint Corporation
Wireless Communications Association International, Inc.
Wireless Direct Broadcast System

Reply to Opposition to Petitions for Reconsideration

BellSouth Corporation
BellSouth Wireless Cable, Inc.
The BRS Rural Advocacy Group
Catholic Television Network
Central Texas Communications, Inc.
Clearwire Corporation
C&W Enterprises, Inc.
Digital Broadcast Corporation
Independent MMDS Licensee Coalition
The ITFS/2.5 GHz Mobile Wireless Engineering & Development Alliance, In
National ITFS Association
Nextel Communications
School Board of Miami-Dade County, Florida
South Florida Television, Inc.
Sprint Corporation
WATCH TV Company
WHTV Broadcasting Corp. d\b\ a Digital TV ONE
Wireless Communications Association International, Inc.
Wireless Direct Broadcast System

APPENDIX E

List of Commenters to *BRS/EBS FNPRM***Comments**

BellSouth Corporation
BellSouth Wireless Cable, Inc.
Blooston, Mordkofsky, Dickens, Duffy & Prendergast
Catholic Television Network
Cheboygan Otsego Presque Isle Educational Service District/PACE Telecommunications
Choice Communications, LLC
Clearwire Corporation
C&W Enterprises, Inc.
Digital Broadcast Corporation
The George Mason University Instructional Foundation, Inc.
Gila River Telecommunications, Inc.
Grand Wireless Company, Inc. / John de Celis
Hispanic Information and Telecommunications Network, Inc.
Independent MMDS Licensee Coalition
The ITFS/2.5 GHz Mobile Wireless Engineering & Development Alliance, Inc.
National ITFS Association
National Telecommunications Cooperative Association
Nextel
NY3G Partnership
OnTarget Technologies, LLC
Precision Data Solutions
Red New York E Partnership
School Board of Miami-Dade County, Florida
School Board of Palm Beach County, Florida
South Florida Television, Inc.
SpeedNet, L.L.C.
Sprint Corporation
Trans Video Communications, Inc.
Wireless Communications Association International, Inc.
Wireless Direct Broadcast System

Reply Comments

Ad Hoc MMDS Licensee Coalition
BellSouth Corporation
BellSouth Wireless Cable, Inc.
Blooston, Mordkofsky, Dickens, Duffy & Prendergast
The Board of Trustees of the Leland Stanford Junior University
Catholic Television Network
Choice Communications, LLC
Clearwire Corporation
C&W Enterprises, Inc.
Department of Education, Archdiocese of New York
Digital Broadcast Corporation
EBS Parties

Hispanic Information and Telecommunications Network, Inc.
Illinois Institute of Technology
Independent MMDS Licensee Coalition
The ITFS/2.5 GHz Mobile Wireless Engineering & Development Alliance, Inc.
National ITFS Association
Nextel Communications, Inc.
NY3G Partnership
Polar Communications Mutual Aid Corporation
South Florida Television, Inc.
SpeedNet, L.L.C.
Sprint Corporation
Stanford University
Trans Video Communications, Inc.
Wireless Communications Association International, Inc.
Wireless Direct Broadcast System

Ex Parte Comments

Abilene Christian University
BellSouth Corporation
BRS Rural Advocacy Group and Central Texas Communications, Inc.
Catholic Television Network
Clearwire Corporation
Clarendon Foundation
Concordia University
C&W Enterprises, Inc.
Dana College
DeLawder Communications, Inc.
Diocese of Lafayette
Diocese of Rockville Centre
E-Copernicus
Evangeline Parish Schools
Franciscan Canticle, Inc.
The George Mason University Instructional Foundation, Inc.
Heritage Baptist Church & Christian Academy
Hispanic Information and Telecommunications Network, Inc.
Gryphon Wireless, LLC
The ITFS/2.5 GHz Mobile Wireless Engineering & Development Alliance, Inc.
Madison Dearborn Partners, LLV
Media Access Project
Morrisonville Community Unit School District #1
NAF
National ITFS Association
National Telecommunications Cooperative Association
Nextel Communications
NextWave Broadband Inc.
NY3G Partnership
Patoka Community Unit School District No. 100
Pearsall Independent School District
Pegasus Communications Corporation

Roberts County Telecommunications Cooperative Association
School District of Clay County
Sprint Nextel Corporation
Teton Wireless
Trans Video Communications
Wireless Communications Association International

**JOINT STATEMENT OF
CHAIRMAN KEVIN J. MARTIN
AND
COMMISSIONER DEBORAH TAYLOR TATE**

Re: Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Use of the Universal Licensing System in the 2500-2690 MHz Band; Part 1 of the Commission's Rules – Further Competitive Bidding Procedures; Amendment of Parts 21 and 74 to Enable Multipoint Distribution Service and the Instructional Television Fixed Service Amendment of Parts 21 and 74 to Engage in Fixed Two-Way Transmissions; Amendment of Parts 21 and 74 of the Commission's Rules With Regard to Licensing in the Multipoint Distribution Service and in the Instructional Television Fixed Service for the Gulf of Mexico; Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets; Review of the Spectrum Sharing Plan Among Non-Geostationary Satellite Orbit Mobile Satellite Service Systems in the 1.6/2.4 GHz Bands; Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, Including Third Generation Wireless Systems, *Order on Reconsideration and Fifth Memorandum Opinion and Order, and Third Memorandum Opinion and Order and Second Report and Order*, (WT Docket No. 03-66, IB Docket No. 02-364, ET Docket No. 00-258), FCC 06-46

In 2004, the Commission initiated a fundamental restructuring of the 2500-2690 MHz band to give educational and commercial licensees contiguous spectrum in the low power segments of the band, while preserving the high power segment for video uses, such as long-distance learning.

Today, we affirm the allocation decisions adopted in the original order, including the reservation of spectrum for educational users. In addition, we take steps today to ease the transition for relocating licensees to the restructured band plan, including reducing the size of transition areas from Major Economic Areas to smaller Basic Trading Areas. We also modify the leasing requirements of Educational Broadcast Service licensees to balance their need to reserve the right to periodically re-evaluate their educational needs with the needs of commercial operators for the certainty of longer-term leasing arrangements. Encouraging education and promoting the deployment of commercial broadband services are both important goals of the Commission, and we believe the leasing provisions the Commission adopts today will support them both. We are also optimistic that this item will help enable this spectrum band to fulfill its potential as a home for innovative broadband and educational services.

**STATEMENT OF
COMMISSIONER MICHAEL J. COPPS, CONCURRING**

RE: Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational, and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands (Third Memorandum Opinion and Order and Second Report and Order, WT Docket No. 03-66).

I have long stated my belief that the EBS band must be used, above all else, to benefit educators. I supported our 2004 *Order* reorganizing the EBS and BRS bands because I believed – as did the great majority of the EBS community – that it would allow educational licensees to get more out of this valuable spectrum. In particular, I believed – and I continue to believe – that access to capacity on low-power, cellularized broadband wireless networks would be a great boon to the universities, high schools, elementary schools, and a wide array of non-profit educational organizations that currently hold EBS licensees. I accepted the argument that educational licensees needed freedom to partner with industry in order to build out the network infrastructure necessary to provide wireless broadband access using this spectrum.

Now we are asked by industry, as well as a portion of the EBS community, to go farther down that road. It is no longer enough, they say, for educational licensees to lease up to 95% of their capacity to commercial users for up to 15 years. Instead, educational licensees seek authority to lease up to 95% of their capacity for up to 30 years and with only a limited and poorly-defined opportunity to revisit the terms of the lease at 15, 20, and 25 years.

The net result of these new ground rules, we are told, will be to enhance the value that educators draw from the EBS band. I certainly hope they are right. I have no doubt that the educational licensees have given this matter careful thought and are genuinely seeking to protect the interests of their present and future students – both rural and urban, young and old. These are precisely the interests that led to the creation of the predecessor to the EBS program over four decades ago.

But I have to tell you that I worry whether we may be going too far today. I am not so certain that it is really wise for any educational institution to lock up, even partially, use of its valuable EBS license for the next 30 years. In making our judgment, it is sobering to remember that 30 years ago the best and the brightest of our engineers believed that the optimal use of this spectrum was for Multipoint Distribution Systems meant to compete with cable video providers. Satellite broadcasting was not even on the radar screen – let alone the low-power, cellularized wireless broadband access technologies that we seek to encourage today.

For my part, I would strongly have preferred to accept the suggestion of one commenter to give EBS licensees the right to reclaim up to 5% of the capacity of their spectrum every year up to a limit of 25% percent. Indeed, I would have supported an even higher limit. That strikes me as a far better way to ensure that the EBS spectrum will ultimately benefit those it is meant to benefit. But because that choice is not before me, I concur, with some hesitation, in today's item.

Finally, I also want to emphasize this Commission's ongoing responsibility to monitor progress – or lack thereof – in the EBS band. We should be enormously proud of the varied and creative uses to which educational licensees have put this band to date:

- Stanford University's Instructional Television Network transmits 350 hours per week of engineering and scientific educational programming to the university's own students as well as to over 6,000 adult students working in the Bay Area.
- South Carolina's Educational Television Network provides distance learning resources to nearly half a million K-12 students.
- The North American Catholic Educational Programming Foundation provides reading and phonics instruction to state and county correctional facilities across the country to remedy high inmate illiteracy rates.
- The Chicago Instructional Technology Foundation delivers video service to area schools as well as the Chicago Children's Memorial Hospital and five community churches.

These are just a few of literally many thousands of valuable contributions that have been made by innovative use of this spectrum. I am confident that as technology marches forward, tomorrow's educators will be able to conceive new and exciting uses for the EBS band. But this band will remain available to educators only if we keep a watchful eye on how it is actually being used. So let no one think the Commission is abdicating its ongoing responsibilities to protect the people's spectrum and the public interest with the changes we make today. I intend to track how these changes evolve, how the spectrum is utilized, how reviews are conducted, and how the integrity of the program is perpetuated in the months and years ahead. If we do our job, we can ensure that the educational promise of this spectrum has a future even brighter than its past.

**STATEMENT OF
COMMISSIONER JONATHAN S. ADELSTEIN
APPROVING IN PART, CONCURRING IN PART**

Re: Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands; Order on Reconsideration and Fourth Memorandum Opinion and Order, and Third Memorandum Opinion and Order and Second Report and Order; WT Docket No. 03-66 et al.

With this omnibus item, we move another step closer to the widespread deployment of wireless broadband services in the 2.5 GHz spectrum band. It's taken a little longer than I hoped, but we are finally clarifying the set of rules that should accommodate future innovative technologies offered by Broadband Radio Service (BRS) and Educational Broadband Service (EBS) operators and facilitate the provision of advanced spectrum offerings. We are establishing a policy regime that will bring these the EBS and BRS services squarely into the 21st century.

When we adopted the underlying Order in this proceeding back in June 2004, I expressed my disappointment that the Order adopted a transition process that was based on major economic areas (MEAs) instead of smaller markets. I was concerned that the obligation to transition an entire MEA would make it exceedingly difficult for proponents to effectuate transitions in their particular market. While it is small comfort to be proven right when it comes to broadband deployment, it is telling that not a single transition plan has been filed in the almost two years since that decision was made. That is why I am so pleased that in our item today, we reverse this earlier decision and agree with a large number of commenters to implement transitions by Basic Trading Areas (BTAs) rather than MEAs. For the foreseeable future, I believe that BRS and EBS services will be local ones, and our decision to adopt BTAs as the transition market should make it a lot easier for proponents to effectuate transitions and start rolling out broadband services.

While much has been said in the record over the past several months about the length of leases between EBS and BRS licensees, I am very pleased to support the compromise advanced by the Wireless Communications Association and the Catholic Television Network that we ultimately adopt in this item. This compromise is a significant one and will enable educational and business entities to engage in meaningful partnerships that ultimately will lead to the deployment of wireless broadband networks. There is so much potential in the 2496-2690 MHz band and this compromise will enable educators, as well as commercial operators, to take full advantage of the opportunities presented by the latest technologies.

I am excited about the future use of the spectrum for broadband services, both commercial and educational. Broadband has the power to transform the lives of individuals and the future of communities. But these networks won't come cheap, and it was critical that parties could come together and find common ground so students and educators can also benefit from the deployment of these state of the art facilities.

On a different subject, I have lingering concerns about our treatment of existing BRS operators who are interested in "opting-out" of the Commission's transition plan. These service providers have complied with our rules for many years, and have deployed digital video (and sometimes even digital broadband) systems that ably serve their respective communities. While there was not sufficient support to move beyond the waiver language that we adopted in our last item, I have tried to provide these BRS

operators with some improved structure by advocating an automatic grant provision for those parties that filed waivers for opt-out that went unopposed. I am disappointed that we ultimately were unable to provide these operators with additional certainty but am pleased we make commitments to review these waivers expeditiously.

Finally, I have concerns with that portion of the item addressing construction requirements of the EBS/BRS services going forward. I have long had a strong interest in promoting active spectrum use and was pleased to work with Sprint and Nextel this past fall to secure significant build out commitments from the companies for their BRS/EBS spectrum holdings in association with their merger Order. I think we have a real opportunity in our decision today to further jumpstart wireless broadband efforts in the 2.5 GHz band by adopting "safe harbors" that are meaningful. Safe harbors are just that – they are not a requirement; parties are not obligated to meet them. A safe harbor is non binding, but if met, it provides operators the security that they absolutely have complied with our substantial service requirements. But if we are to provide that security option by adopting safe harbors, we should make them worthwhile. Operators already are providing significant wireless services in these bands today, so meeting the enhanced safe harbors that I proposed clearly was possible.

I want to thank the staff of the Wireless Telecommunications Bureau and the International Bureau for all of their time and hard work spent on the second massive item in this monumental proceeding. This Order represents another important step by the Commission to ensure that providers continue to have opportunities to deploy broadband wireless so that all consumers across America have access to the best communications possible.